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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re NAOMI T. et al., Persons Coming  
Under the Juvenile Court Law.

B215404

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK60351)

Plaintiff and Respondent,

v.

JOSEPH T. et al.,

Defendants and Appellants;

N.T.,

Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Jacqueline H. Lewis, Referee. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Appellant  
Joseph T.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Appellant  
Celina C. M.

Diana W. Prince, under appointment by the Court of Appeal, for Appellant N.T.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, O. Raquel Ramirez, Deputy County Counsel, for Respondent.

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This dependency matter involves three sisters, Naomi, Gwendolyn and Ruby. From 2005 to 2009, they were shuffled from one foster home to another and often separated. Parental rights were terminated in April 2009, and plans for adoption were approved by the juvenile court. Their older sister N., along with their parents, appeal the juvenile court's decision, contending it erred when it failed to protect Naomi's right of participation in the termination proceedings and when it held that the sibling bond exception did not apply. We affirm.

## **FACTS**

### **I. Background**

Mother Celina C. M. (Mother) and Father Joseph T. (Father) have four daughters together: N.T. (born 5/1995), Naomi T. (born 11/1997), Gwendolyn T. (born 6/2000) and Ruby T. (born 10/2002). The children's journey through the foster care system began when the Department of Children and Family Services (DCFS) received a referral on July 25, 2005, that Father, a methamphetamine user, "would drag the kids around by the hair, [] spank[] them and hit[] them with a closed fist." He also reportedly mentally and physically abused Mother and told N. about his and Mother's sexual activities. It was also alleged that Father kicked Mother and the children out of the house that day.

Father had previously been arrested for spousal abuse in 1996 and 1999, but was never convicted. Although Mother left Father after the incident in 1999, she returned to him in 2004 because she lacked support from her family and could not take care of the children by herself. For her part, Mother was referred to DCFS on January 30, 2003, for physical abuse of N. but the allegations were found to be inconclusive.

During its investigation of the 2005 referral, Mother told DCFS that she and Father argued on July 24, 2005. Father called Mother a "bitch" and a "whore" and told

her to “[g]et your lazy, ugly butt off of the phone and get to work.” He then threw a cup of apple juice at her and punched her in the face, causing her to take the children and leave. The case worker observed that Mother had fist-sized bruises on her face. Mother and the children initially stayed with friends in El Monte and then were moved to a domestic violence shelter in Whittier. Mother was asked to leave the shelter on August 12, 2005, for failure to comply with shelter rules. Because she had nowhere else to stay, Mother agreed to place the children in protective custody and go to a different domestic violence shelter until she could be reunited with them.

The children corroborated Mother’s story in interviews and also described a history of abuse in the home. N. told the case worker that her mother threw a book at her once and hit her in the face. She also stated that her mother hit her legs with a broom in June 2005. Both Gwendolyn and Naomi reported that their parents often fought. Naomi stated that in 2004, Father “almost shoved a knife in my mom’s stomach because she would not be quiet.” Naomi also reported that Father has pulled her hair, grabbed her ears, pinched and twisted her legs, slapped her and hit her in the face with his fist. Gwendolyn reported that Father has pulled her hair, kicked her in the legs and slapped her. According to Gwendolyn, Father also threw a chair at Mother on July 24, 2005, and in previous incidents, has pushed Mother, slapped her and once almost hit her with a dart.

When he was interviewed, Father denied any drug use or spousal or child abuse and stated he believed Mother was suicidal and crazy. He also stated that the children hit each other but that Mother “can get the children to say whatever she wants them to.” Although he questioned the paternity of Naomi and Ruby, he said he wanted all of the children back.

## **II. N. Is Separated From Her Sisters in Foster Care**

A detention hearing was held on August 26, 2005, after which the juvenile court found that substantial danger existed to the physical or emotional health of the children and there was no reasonable means to protect the minors without removal. The court

further found the children were subject to its jurisdiction because they suffered serious physical harm, their parents failed to protect them from harm, they had been subjected to acts of cruelty, and their siblings have been abused or neglected. (Welf. & Inst. Code, § 300, subds. (a), (b), (i), (j).)<sup>1</sup> The court ordered the children detained with monitored visits by their parents and also sent them to counseling.

Although the four sisters were initially placed together, N. was removed from the foster home on September 8, 2005, as a result of her extreme aggression toward her sisters, including slamming Naomi's hand in a door. Naomi, upset at being separated from her sister, later recanted and denied that it ever happened even though N. admitted to it. The case worker also saw bite marks on Naomi's thigh and N. admitted that she bit her and pulled her sisters' hair "because they get on my nerves." The three younger sisters were also removed from the foster home in October, due to concerns about the foster mother's inappropriate verbal and physical discipline. They were transferred to their aunt's home in San Diego. The case worker recommended N. remain placed elsewhere because of her hostility toward her sisters. During a weekend visit with her sisters, N. told the case worker that she was "glad" she was not going to live with her sisters because she was "tired of taking care of them."

### **III. Mother Resumes Custody of the Children**

At a disposition hearing on October 5, 2005, the juvenile court granted physical custody to Mother on the condition she keep the children away from Father unless there was proper supervision. Father was ordered to complete parenting classes, domestic violence counseling and random drug testing. DCFS was ordered to provide reunification services to Father.

Mother initially stayed at a domestic violence shelter with the children, but Father reportedly agreed to move out of his condominium in Baldwin Park and allow Mother and the children to stay there. In March 2006, DCFS reported that though the children were developing "age appropriately," they were receiving therapy. Gwendolyn was

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<sup>1</sup> All further section references are to the Welfare and Institutions Code unless otherwise specified.

diagnosed with post-traumatic stress disorder. She displayed “aggressive behavior toward her sisters and appeared worried, isolating from family members, c[r]ying and [having] sleep disturbanc[es]. Naomi was diagnosed with Dysthymic Disorder and was reported to be impulsive, angry, and depressed. N. was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. She had a negative attitude, bullied her sisters, fought and cursed.

In April 2006, DCFS requested the court issue a warrant to recover the four children because it could not contact Mother and the children had not attended school in a week. Mother contacted her case worker a few days later and told her she moved to Las Vegas, allegedly after Father came home and threatened her. After further investigation, DCFS discovered that Father had been living with Mother the entire time in California and in Las Vegas. Mother admitted she “was overwhelmed with raising the children . . . it was just [too] much, their behavior was too much, fighting and fussing all the time. [N.]’s been so mean to the other children, pulling their hair, torturing them, scaring them and almost drowning Naomi in the pool, sitting on top of her in the water, making her go under the water and laughing about it, [N.] is really cruel to Naomi and it scares me about some of the things that she does to her.”

#### **IV. The Children Are Detained and Separated Again**

Because Mother violated the juvenile court order, the children were once more detained in May 2006, with N. again placed separately. However, the juvenile court ordered the children’s social worker to investigate N.’s conduct and “make sure there is a true reason to keep the girls apart.” The children visited with one another on May 28, 2006, when they assembled for N.’s 11th birthday party. When the children were interviewed in May, Gwendolyn and Naomi both stated a desire to live with Mother. Gwendolyn reported, “I want to live with [Mother and Mother’s friends], [N.] is mean to me and she makes me cry.” N. reported she wanted to live with Father.

On June 7, 2006, the court ordered the children to live with Mother’s friend, Anna S. On October 4, 2006, however, Anna decided she was unable to care for all four

children “with all of the hassle from their mother” and they were transferred to a foster home.

On October 8, 2006, N. was removed from her new foster home “due to numerous reports by the foster mother, of [N.]’s physical[ly] aggressive behavior toward her siblings. . . .” N. was again separated from her sisters and transferred to another foster home on October 15, 2006. At her new foster home, 11-year-old N. continued to act out, sneaking out of the house at midnight with a 14-year-old female resident to attend a party on December 29, 2006. The foster mother had to place her in respite care on December 31, 2006, to prevent her from sneaking out to a New Year’s Eve party. N. left the foster home without permission again at 9:00 p.m. on January 4, 2007, when she brushed past the foster mother with a 13-year-old resident. N. returned to the foster home the next night after she telephoned the foster mother and asked to return.

The other girls also began to have behavioral problems and show aggression toward one another. Her foster mother reported that Gwendolyn was “manipulative toward her and [her] siblings, provok[ing] her siblings to the degree of physical aggression and refus[ing] to participate in the home program of assigned tasks/responsibilities, . . . [she] does not like to shower/hygiene . . . [and she] shows little to no respect toward adults and/or authority.” Gwendolyn was removed from the foster home on November 27, 2006, and separated from her sisters as well. According to her new foster mother in interviews in April 2007, Gwendolyn lied and was disruptive, disrespectful and badly behaved. She could not be left alone with other children, whom she kicked. The foster mother asked to have Gwendolyn transferred out of her home.

On September 14, 2006, Naomi was hospitalized for hearing voices in her head that told her to kill herself. She remained in the hospital for seven days. On October 3, 2006, the paramedics were called when Naomi held a knife to her throat and again threatened to kill herself. Naomi continued to have difficulty dealing with her emotions, repeatedly threatening to kill herself and throwing tantrums that required containment to prevent “destruction of property, harm to herself and others in the home.” A nurse

concluded that Naomi “requires a stable home, nurturance, medication, therapy, and long-term treatment to deal with the trauma she has witnessed and been a victim to in her family. Naomi is at high risk for re-hospitalization if she is not receiving intensive services and medication treatment.”

Although she was initially praised by the foster mother as being sweet and helpful, Ruby began to mimic the profane language used by her older sisters. In July 2007, Ruby, almost five years old, was discovered by her foster mother under the covers with another little girl, possibly engaging in inappropriate sexual activity. When she was asked about the incident, Ruby disclosed that she had frequently seen her parents “humping” each other naked; that Father would hump her too; that her parents would touch and kiss her “PeePee” and her mouth; and that Naomi touched her at night when they were sleeping but warned her not to say anything because it was a “family secret.”

Throughout this time period, a number of relatives and other caregivers considered adopting the children but were either judged unsuitable or they changed their mind. The children were also transferred to different homes a number of times, primarily as a result of their behavioral problems. Although both Father and Mother petitioned to regain custody of the children, neither satisfied the conditions for reunification set by the juvenile court.

#### **V. DCFS Recommends a Permanent Plan**

In a February 7, 2007 status report to the juvenile court, DCFS recommended that the court terminate reunification services for Mother and Father and set a hearing within 120 days to address a permanent plan of adoption or legal guardianship. In a May 21, 2007 order, the juvenile court found that the parents had not made significant progress in resolving the problems that led to the children’s removal from their home and in the interest of providing stability for the children, terminated family reunification services. DCFS concluded, “The children continue to struggle with several issues regarding anger, physical aggression, and sexually inappropriate behavior toward one another and would not benefit from being placed together.”

In July 2007, DCFS explored the possibility of permanently placing Ruby at the home of her maternal aunt Victoria M. and her husband while Naomi and Gwendolyn were to be placed with their maternal aunt, Diana M. in El Cerrito. Both prospective placements were in Northern California. Mother understood and accepted this plan for the girls. Naomi and Gwendolyn were permanently placed with their aunt in El Cerrito on August 2, 2007, and Ruby was permanently placed with Victoria M. and her husband on September 22, 2007.

On September 27, 2007, Victoria M. reported to the case worker that Ruby was “acting out, screaming, and having tantrums without provocation to the degree of attracting the neighbors [*sic*] attention who came to [Victoria M.]’s home to inquire about the screaming.” Ruby received additional counseling and therapy as a result. After their permanent placement, Gwendolyn and Naomi began “showing behaviors that are evident of feeling secure.”

Naomi, Gwendolyn and Ruby were present for a July 23, 2008 section 366.26 hearing when their attorney reported that all three were doing well. In fact, Naomi was no longer taking medication and was “not experiencing auditory or visual hallucinations.” In a letter dated January 5, 2008, Ruby’s psychologist reported that it was in Ruby’s best interest to stay with the Victoria M. and her husband since she “appears to be thriving in their care, the bonds between them are strong, and her current foster parents providing a stable, nurturing, and caring family environment.” Naomi and Gwendolyn’s therapist also reported that on January 16, 2009, the girls had made good progress and felt secure and loved by their aunt. As of March 2009, Ruby, Naomi and Gwendolyn were happy and did not want to be removed.

N. continued to experience behavioral issues stemming, among other things, from her separation from her siblings. However, she claimed that she enjoyed seeing her



mother and her new baby brother<sup>2</sup> but that she did not “really care” about seeing her sisters because she “didn’t used to see them that much, anyway.”

## **VI. Sibling Visitation**

Although the juvenile court continually ordered regular sibling visits, visits among the girls were irregular at best given the geographic challenges presented. In 2006 and 2007, when all four children were in Southern California, it appears visitation among the children occurred only when they visited with Father or Mother. In June 2007, the children visited with one another twice. In July 2007, the children saw each other only once while N. and Ruby saw each other twice. In August 2007, all of the children were together for a juvenile court hearing, and N. and Ruby visited each other every Saturday with their parents.

After their move to Northern California, Naomi, Gwendolyn and Ruby regularly saw each other every month. There were no visits, however, between N. and her sisters from September 2007 to April 2008. Although given the opportunity to visit her sisters over the holidays, N. vacillated between seeing them over Thanksgiving or Christmas and ultimately was not able to visit them on either holiday. N. periodically spoke to her sisters by telephone. She tried to call Ruby at 6:00 a.m. on her birthday in October, but Victoria M. complained it was too early. N. also tried to call Naomi and Gwendolyn but most of her calls were not returned. She managed to speak to Gwendolyn and Naomi in November 2007. In a July 23, 2008 status report, DCFS reported that N. visited her sisters in Northern California for the first time in April 2008. The visit “seemed to dispel the rumors among the maternal relatives that N. has significant behavior problems.”

The sisters had one visit with Mother on October 24, 2008. Father brought N. to Northern California to visit her sisters in February 2009 and met with Gwendolyn and Naomi but Ruby’s caregivers refused to bring her to see Father. Mother and Father had

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<sup>2</sup> Mother and Father stopped seeing one another sometime in 2006. Mother subsequently had two other children with another man.

each only seen the girls once in the past one and a half years since they moved to Northern California.

In a letter dated December 10, 2008, N. expressed her sadness at the separation from her family (misspelling and grammatical errors in original).

“Dear Judge & Lawer,

“I am writing this letter because I want you to know how I feel. I feel sad, that I can’t be with my mom. If I were with my mom I would feel happy more comterable. I would be able to see my other family members more often.

“Being in the system has ruined my life in many ways and here are a few of my reson’s [sic]. I don’t’ [sic] get loved all of time as I used to. I don’t get treated the same, and it is akward [sic] living in a stranger’s home. I don’t get to see my mom, dad, sisters and other family often. I haven’t gone on family vacation’s, [sic] trips or parties.

“I know that it is court ordered to see my sisters once a month and that has not happen. (Sic.) That make me mad and sad because the court promised I would get wat I wanted. (Sic.)

“My mom has done a lot to get me back. She started going to college. She got a job. She moved for me a [sic] bought a house. She is going to therapy. I think she deserved me. And she went to her classes that she need to [sic]. And she love’s me so much she does everything for me to be happy and safe.

“To finish off my letter I want to be with my mom and want to see my sister once a month an have overnights with my dad. And if I could have overnights with my Auntie Deanna and Grama Dora. Thank you for reading this.

“Sincerely,

“[N.]

“Merry Christmas!”

## **VII. Adoption**

In an order dated April 13, 2009, the juvenile court approved the permanent placement plans for the younger three girls and ordered that DCFS set up sibling contact with N. The court found,

“[I]t’s clear to me that what is in the children’s best interest are stability and permanence. And it has been shown here by the fact of how much better, how much more stable these children are since they have been placed away from these parents. [¶] . . . [¶]

“Once the court makes a finding that the children are adoptable the question is whether any of the exceptions to the adoption exists. And unfortunately—And this is difficult for me because I know how much [N.] loves her sisters—but the court has to look at it on the basis of the feeling[s] of Naomi, Gwendolyn and Ruby. And the court is not finding that any of the exceptions to adoption exist. [¶] . . . [¶] And in regards to (c)1, b(5), the court is also finding that—I understand that [N.] loves the girls but—and I’m going to be ordering the Department to continue to make arrangements for sibling contact here, as I do believe that’s important. But again, the benefit to the girls of having a safe permanent home outweighs that benefit of the relationship between the siblings as well.”

As to N., the court felt that the best route was to try to work toward returning her to the parents so it allowed unmonitored overnight visits with Mother and Father and retained jurisdiction. Father, Mother and N.<sup>3</sup> separately appealed from the juvenile court’s order terminating parental rights. Each submitted his or her own briefing but joined and adopted the others’ arguments on appeal.

### **DISCUSSION**

#### **I. The Sibling Bond Exception Does Not Apply**

Appellants contend the juvenile court erred when it held the sibling bond exception did not apply to prevent termination of parental rights. We disagree.

The Legislature has determined that, where possible, adoption is the first choice because it gives the child the best chance at a secure and permanent future with a responsible caretaker. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the juvenile court

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<sup>3</sup> Father, Mother and N. will be collectively referred to as “appellants.”

determines by clear and convincing evidence that a child is likely to be adopted, it shall terminate parental rights unless it finds “a compelling reason” that termination would be detrimental to the child, including “substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

Accordingly, the juvenile court must first determine whether terminating parental rights would substantially interfere with a sibling relationship. Then, the court must find that the benefits of continuing that relationship outweigh the benefits of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) The mere existence of a friendly sibling relationship does not trigger the exception. “To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*Id.* at p. 952, fn. omitted.) We apply the substantial evidence standard of review, drawing all reasonable inferences in support of the juvenile court’s findings. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

When they were first detained in 2005, N. was 10 years old, Naomi was seven, Gwendolyn was five and Ruby was almost three. With the exception of the seven months they were reunited with Mother (from October 2005 to May 2006), the three younger sisters spent most of the next three years apart from N. and from each other. Appellants argue that because the sisters physically spent more years living together than apart, they must have had many shared experiences. However, they fail to specify those experiences. Indeed, N. admits that there is “scant” information in the record as to the relationship among the siblings.

As a result, N. “requests this Court accept her representations as to her desires to continue her relationship with her sisters as representative of their viewpoints as well.” Though we cannot deny N.’s sincere wish to maintain contact with her sisters, as evidenced by her December 2008 letter, we are reluctant to conclude that her sisters reciprocate those desires to such a degree that they would suffer significant detriment if their relationship with her was severed. The record shows that N. often exhibited physical aggression toward her sisters, including biting Naomi in the thigh, slamming her hand in a door, and nearly drowning her. Gwendolyn has also reported that N. was “mean” to them and that she made them cry. At best, these incidents may be characterized as mere sibling rivalry. But perhaps more fairly construed, as the juvenile court noted early in the case, they show that the sisters’ relationship was not so close that the sibling bond exception should apply.

Neither do we accept appellants’ argument that the sisters’ bonds outweigh the benefits of adoption. The record of the girls’ four-year ordeal in the foster care system speaks for itself. They were each bounced from one foster home to another, resulting in significant psychological damage. That damage only began to be repaired after Naomi, Gwendolyn and Ruby settled into their respective homes in Northern California. “The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.) Substantial evidence supports the juvenile court’s finding that no such exceptional circumstances exist.

Finally, it is not “abundantly” clear that Naomi, Gwendolyn and Ruby will never see their sister again. Although it was with significant prodding from DCFS, the record shows that the Northern California relatives did allow N. to see her sisters at least three times since the children were moved. The juvenile court has ordered DCFS to ensure the sisters continue to remain in contact. There is no indication that DCFS will fail to comply with the court’s order.

## **II. Naomi Was Not Denied Her Right to Participate in the Proceedings**

Because Naomi was 11 years old at the time of the section 366.26 hearing, DCFS was obligated to give her notice of her right to be present at the hearing. (§ 294.) Section 294 specifically requires notice to be given to the child as well as her counsel. (*Id.*, subd. (a)(3), (6).) Since she was not present at the hearing, the juvenile court was obligated to determine whether she was properly notified of her right to attend and ask why she did not attend. (§§ 349, 366.26, subd. (h)(2).) Father argues the juvenile court failed to ensure Naomi was properly notified of her right to be present and failed to ask why she did not attend.

While it is clear her attorney received notice of the section 366.26 hearing, the record does not reflect any notice to Naomi of the initial or continued section 366.26 hearings as required under section 294. However, there were no objections when the juvenile court found that notice of each of the section 366.26 hearings had been given “to all appropriate parties as required by law”. There were also no objections when Naomi’s attorney waived Naomi’s appearance for each of the hearings. There continues to be no complaint from Naomi herself that she was denied the opportunity to appear. Not only can appellants not now complain about Naomi’s absence from the proceedings when they failed to do so below, they lack standing to do so. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 403.) Because appellants were not aggrieved by the lack of notice to Naomi, they may not challenge it on appeal. (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.)

**DISPOSITION**

The judgment is affirmed.

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BIGELOW, J.

We concur:

FLIER, Acting P. J.

MOHR, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.